

Senate Study Bill 1098 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON DANDEKAR)

A BILL FOR

1 An Act relating to prohibited concealments, suppressions, or
2 omissions of material facts in connection with new motor
3 vehicle repairs.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 714.16, subsection 2, paragraph a, Code
2 2011, is amended to read as follows:

3 a. (1) The act, use, or employment by a person of an unfair
4 practice, deception, fraud, false pretense, false promise,
5 or misrepresentation, or the concealment, suppression, or
6 omission of a material fact with intent that others rely upon
7 the concealment, suppression, or omission, in connection with
8 the lease, sale, or advertisement of any merchandise or the
9 solicitation of contributions for charitable purposes, whether
10 or not a person has in fact been misled, deceived, or damaged,
11 is an unlawful practice.

12 (2) It is deceptive advertising within the meaning of
13 this section for a person to represent in connection with the
14 lease, sale, or advertisement of any merchandise that the
15 advertised merchandise has certain performance characteristics,
16 accessories, uses, or benefits or that certain services are
17 performed on behalf of clients or customers of that person if,
18 at the time of the representation, no reasonable basis for
19 the claim existed. The burden is on the person making the
20 representation to demonstrate that a reasonable basis for the
21 claim existed.

22 (3) A retailer who uses advertising for a product, other
23 than a drug or other product claiming to have a health related
24 benefit or use, prepared by a supplier shall not be liable
25 under this section unless the retailer participated in the
26 preparation of the advertisement; knew or should have known
27 that the advertisement was deceptive, false, or misleading;
28 refused to withdraw the product from sales upon the request of
29 the attorney general pending a determination of whether the
30 advertisement was deceptive, false, or misleading; refused
31 upon the request of the attorney general to provide the name
32 and address of the supplier; or refused to cooperate with the
33 attorney general in an action brought against the supplier
34 under this section.

35 (4) (a) "*Material fact*" as used in this subsection

1 does not include repairs of damage to or adjustments on
2 or replacements of parts with new parts of otherwise new
3 merchandise, other than repairs to, adjustments on, or
4 replacements of parts of a new motor vehicle as defined in
5 section 321.1, if the repairs, adjustments, or replacements
6 are made to achieve compliance with factory specifications
7 and are made before sale of the merchandise at retail and the
8 actual cost of any labor and parts charged to or performed by a
9 retailer for any such repairs, adjustments, and parts does not
10 exceed three hundred dollars or ten percent of the actual cost
11 to a retailer including freight of the merchandise, whichever
12 is less, providing that the seller posts in a conspicuous place
13 notice that repairs, adjustments, or replacements will be
14 disclosed upon request.

15 (b) "Material fact" as used in this subsection does not
16 include repairs of damage to or adjustments on or replacements
17 of parts with new parts on a new motor vehicle, if the repairs,
18 adjustments, or replacements are made to achieve compliance
19 with factory specifications and the actual cost of any labor
20 and parts charged to or performed by a retailer for any such
21 repairs, adjustments, and parts does not exceed five percent
22 of the actual cost to a motor vehicle dealer including freight
23 of the new motor vehicle, provided that the seller posts in
24 a conspicuous place notice that repairs, adjustments, or
25 replacements will be disclosed upon request.

26 (c) The exemption exemptions provided in this paragraph "a"
27 does do not apply to the concealment, suppression, or omission
28 of a material fact if the purchaser requests disclosure of any
29 repair, adjustment, or replacement.

30 Sec. 2. Section 714H.4, subsection 2, Code 2011, is amended
31 to read as follows:

32 2. a. "Material fact" as used in this chapter does not
33 include repairs of damage to, adjustments on, or replacements
34 of parts with new parts of otherwise new merchandise, other
35 than repairs to, adjustments on, or replacement of parts

1 of a new motor vehicle as defined in section 321.1, if the
2 repairs, adjustments, or replacements are made to achieve
3 compliance with factory specifications and are made before
4 sale of the merchandise at retail and the actual cost of any
5 labor and parts charged to or performed by a retailer for any
6 such repairs, adjustments, and parts does not exceed three
7 hundred dollars or ten percent of the actual cost to a retailer
8 including freight of the merchandise, whichever is less,
9 provided that the seller posts in a conspicuous place notice
10 that repairs, adjustments, or replacements will be disclosed
11 upon request. The exclusion provided in this subsection does
12 not apply to the concealment, suppression, or omission of a
13 material fact if the purchaser requests disclosure of any
14 repair, adjustment, or replacement.

15 b. "Material fact" as used in this chapter does not include
16 repairs of damage to or adjustments on or replacements of
17 parts with new parts on a new motor vehicle, if the repairs,
18 adjustments, or replacements are made to achieve compliance
19 with factory specifications and the actual cost of any labor
20 and parts charged to or performed by a retailer for any such
21 repairs, adjustments, and parts does not exceed five percent
22 of the actual cost to a motor vehicle dealer including freight
23 of the new motor vehicle, provided that the seller posts in
24 a conspicuous place notice that repairs, adjustments, or
25 replacements will be disclosed upon request.

26 EXPLANATION

27 This bill relates to prohibited concealments, suppressions,
28 or omissions of material facts in connection with new motor
29 vehicle repairs.

30 Currently, consumer fraud protection provisions in Code
31 section 714.16, and Code chapter 714H provide that it is not a
32 prohibited concealment, suppression, or omission of a material
33 fact for a retailer to fail to disclose that new merchandise
34 was repaired to factory specifications if the cost to repair
35 the merchandise does not exceed the lesser of \$300 or 10

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1 percent of the cost of the merchandise, and the retailer posts
2 a sign stating that all repairs will be disclosed upon request.
3 The bill changes the threshold amount under which a prohibited
4 concealment, suppression, or omission of a material fact has
5 not occurred, with respect to new motor vehicles, to 5 percent
6 of the cost of the new motor vehicle.